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Fifth report on unilateral acts of States

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Addendum

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III. Consideration of other questions that may give rise to additional draft articles that can be applied to all unilateral acts

148. There are other aspects of the topic that can be the subject of rules applicable to all unilateral acts that meet the definition used thus far, regardless of their content or legal effect: observance of unilateral acts, which leads again to consideration of the well established rule of the law of treaties, *pacta sunt servanda*, and the need for norms that establish the binding nature of unilateral acts; the application of such acts in time, which raises, among other questions, the issue of the non-retroactivity of an act; and, lastly, the application of unilateral acts in space.

149. As has often been noted, while it would seem possible to formulate rules that are applicable to all unilateral acts regardless of their content or material aspects, and especially in respect of their elaboration or formulation, this does not seem to be the case when dealing with aspects that call for different treatment owing to the diversity of such acts, such as matters relating to an act's legal effects. If one takes as a reference those unilateral acts that are considered most common — protest, renunciation or recognition — it will be seen that, while their form is the same, their legal effects may differ. It has been suggested that promises might be studied as unilateral acts for which specific rules could be elaborated to regulate their functioning. Part Two of the draft articles, on rules applicable to unilateral acts by which States assume obligations, is offered for the Commission's consideration on this basis. This Part looks at the revocation, modification, extinction and suspension of unilateral acts. A general reference is also made to conditional unilateral acts, even though they are not included as a separate category in this Part.

A. General rule concerning observance of all unilateral acts

150. In the law of treaties, as reflected in article 26 of the 1969 Vienna Convention, the *pacta sunt servanda* rule governs or underlies the binding nature of the treaty. This rule needs no further commentary. It has been amply considered in doctrine together with the principle of good faith and has been considered in some cases by international tribunals,[97] a topic which the Special Rapporteur touched on briefly in his first report. [98]

151. The question of the nature of unilateral acts and the basis for their binding nature has been discussed in doctrine and in the Commission. As noted in the first report, the fundamental rule of the law of treaties, *pacta sunt servanda,* from which their binding nature derives cannot be easily assimilated by or transferred to unilateral acts; yet, it ought to be possible to consider the establishment of a similar norm that would provide a basis for unilateral acts if they are considered to be binding and to have legal effects.

152. Consideration of the binding nature of unilateral acts has generated a more important controversy in doctrine, although in recent years the discussion would

[97] See, for example, the *U.S. nationals in Morocco* case, *I.C.J. Reports 1952*, p. 212, and the *Admission of a State to membership in the United Nations (Article 4 of the Charter)* case, *I.C.J. Reports 1948*, p. 91.

[98] A/CN.4/486.

seem to reflect a tendency to consider such acts as binding on a State when they are formulated in accordance with the requisite criteria. As has been noted, "during the first phase, which occurred during the 1960s, a unilateral undertaking was understood as being either an offer that acquired normative value once it was accepted by the State or States to which it had been addressed, or as a counter-offer by the other State".[99] There are of course those who contend that since such acts are not contemplated in article 38 of the Statute of the International Court of Justice such a view is difficult to uphold. In the Special Rapporteur's view, this flexible provision must evolve along with society and international relations and be adapted to conform with reality.

153. Some authors, who tend to be consensualists reject the binding nature of such acts, concluding that they are acts of a political nature.[100] What is more, some authors consider that a promise, even though unilateral as to form, cannot be binding if it is not accepted by the addressee and cite as grounds for this argument the *Island of Lamu* arbitral decision (1889), a dispute involving Germany and Great Britain. The declarations by the Sultans of Zanzibar were not binding. The arbitrator in that decision held that "in order to transform this intent into a unilateral promise that is equivalent to a convention, the agreement of wills must have been manifested by the express promise of one of the parties, together with the acceptance of the other".[101] Some consider a unilateral promise to be unnecessary, since the full legal effect can be conferred through incorporation in a conventional context. Indeed, it has been pointed out by some that similar institutions, such as acquiescence or estoppel, may be used to the same effect.

154. The voluntarists, on the other hand, accept the binding nature of a unilateral act and find its basis in the expressed will of the formulating State, an argument that has its basis in the *pollicitatio* of Roman law. Some authors[102] maintain that the basis of unilateral acts is to be found in the sovereign will of States and in the principle of *promisorio implendorum sunt servanda*, which derives from the *pacta sunt servanda* rule. Generally speaking, the binding nature of unilateral acts would seem to have its basis in good faith.[103] If a unilateral act is undertaken with this intention, then there is no reason why such an act cannot be considered binding from this point of view. Some authors have questioned the binding nature of the unilateral

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[99] Weil, Prosper. "Le droit internationale en quête de son identité", *Cours général de droit international public*, *Collected Courses of The Hague Academy of International Law*, No. 237, 1992, vol. VI, p. 156.

[100] Garner, J.W. "The International Binding Force of Unilateral Oral Declarations", *American Journal of International Law*, vol. 27 (1933), pp. 493-497.

[101] Arbitral sentence of Baron Lambermont in the *Island of Lamu* dispute, *Revue de droit international et de législation comparée (RDILC)*, XXII, 1890, pp. 349-360, p. 354.

[102] Degan, Vladimir Duro, *Source of International Law* (Nijhoff, 1997).

[103] Reuter, Paul, *Droit international public* (Paris, 1983), p. 164; P. Guggenheim, *Traité de droit international public*, vol. I (Geneva, Georg, 1967), p. 280; Suy, Eric, *Les actes juridiques unilatéraux en droit international public* (Paris, 1962), p. 151; and J. D. Sicault, who noted that: "One may therefore conclude at the close of this review that good faith constitutes the basis of the binding nature of unilateral undertakings, provided that this notion is not construed to mean solely as a duty of loyalty but also the protection of legitimate confidence, which is indispensable to the security of international relations, where emphasis must ultimately be placed". "Du caractère obligatoire des engagements unilatéraux", *Revue générale de droit international public (RGDIP)*, vol. 83, 1979, II, p. 686.

promise",[104] while others consider that "there is no logical reason not to confer [on a promise] a nature identical to that of a unilateral promise".[105] In any event, as many have noted, such acts are binding: "it is in this confidence in the given word that the basis of the promise's validity is to be found".[106]

155. The fact that the different institutions in international law that regulate the behaviour of States in their international relations are so similar sometimes poses serious problems when endeavouring to classify a particular legal act as unilateral. Thus it can be seen that a promise is sometimes confused with estoppel, which in the view of some makes it impossible to modify a previous position. One could say that the effect of estoppel is exactly the same as that of a promise. It will be recalled, however, that there is a fundamental difference between the two. For estoppel to produce effects, a third State must have acted on the basis of that behaviour. In the present instance this means that the author of the declaration has made an undertaking, but also that the third State believes in good faith that that undertaking is genuine. A promise may also be confused with a stipulation according rights to third States, which is referred to in article 36, paragraph 1, of the 1969 Convention on the Law of Treaties. The unilateral act of interest here, as noted above, is a heteronormative act, that is to say, a manifestation of will by which one or more subjects of international law create norms that are applicable to third parties which can have rights conferred on them even though they did not participate in the elaboration of the act. The difference here, it must be recalled, is that while the act in question may appear to be a unilateral act of conventional origin, its legal effects are produced only when it is accepted by the addressee. One might even say that a stipulation in favour of a third party constitutes an offer that requires an acceptance, a fact that makes it conventional in nature and distinguishes it from a unilateral act, which, like a truly unilateral promise, requires no acceptance or any reaction signifying acceptance from the addressee.

156. Once again, the acts that have been viewed as typifying the unilateral acts covered by this project of codification and progressive development are not always unilateral in the sense that interests us here. Thus, for example, recognition may be conventional in nature, as is the case, among many others, of the recognition of the United States of America under the Treaty of Paris of 3 September 1783, which was concluded between Great Britain and the United States.

157. The International Court of Justice has also recognized the binding nature of such acts, even though it refers to a particular type, the promise. For the Court, the declarations by the French authorities produced their effect automatically, without the need for any tacit acceptance thereof. In its 1974 decisions in the *Nuclear Tests* case the Court concluded that:

> "It is well recognized that declarations made by way of unilateral acts, concerning legal or factual situations, may have the effect of creating legal obligations. Declarations of this kind may be, and often are, very specific. When it is the intention of the State making the declaration that it should be bound according to its terms, that intention confers on the declaration the character of a legal undertaking, the State being thenceforth legally required to follow a course of conduct consistent with the declaration. An undertaking of

[104] Quadri, R., *Collected Courses* ..., vol. 113 (1964-III), p. 364.
[105] Venturini, G., *Collected Courses*, vol. 112 (1964-II), pp. 401-402.
[106] Suy, E., op. cit., p. 151.

this kind, if given publicly, and with an intent to be bound, even though not made within the context of international negotiations, is binding. In these circumstances, nothing in the nature of a *quid pro quo*, nor any subsequent acceptance of the declaration, nor even any reply or reaction from other States, is required for the declaration to take effect, for this would be inconsistent with the strictly unilateral nature of the juridical act by which the pronouncement of the State was made."[107]

158. The source of the obligation in the case of a promise is the promise itself, the unilateral act that has been formulated, and not the explicit or tacit agreement of the addressee. Consequently the basis for this binding nature is to be found, as in the case of treaties, in good faith. Here the International Court of Justice clearly states:

> "One of the basic principles governing the creation and performance of legal obligations, whatever their source, is the principle of good faith. Trust and confidence are inherent in international cooperation, in particular in an age when this cooperation in many fields is becoming increasingly essential. Just as the very rule of *pacta sunt servanda* in the law of treaties is based on good faith, so also is the binding nature of an international obligation assumed by unilateral declaration."[108]

159. If one looks at other unilateral acts, it can be seen that they are similarly accorded a binding character both in doctrine and in practice. Thus, for example, it will be seen that the recognition of States produces legal effects and imposes specific obligations on the State formulating the act. Attention is drawn here to the declaration made by the French representative in a case before the International Court of Justice during an open session held on 4 August 1931, in which he affirmed that "recognition of [a State's] independence implies, on the one hand, that the acts of its Government are considered binding under international law on the State being recognized and, on the other hand, that the rules of international law will be applied to that State".[109]

160. Renunciation is another unilateral act — although nothing prevents it from having a conventional character — which has specific legal effects. Just as a State may voluntarily assume unilateral obligations, so can it voluntarily renounce a law or a legal claim. Renunciation, which, as both doctrine and jurisprudence have made clear, is not presumed[110] but must be expressed,[111] is a unilateral act by virtue of which a State voluntarily gives up a subjective right. The legal effect of renunciations has been considered by international tribunals, which ascribe to them a binding character, as was done in the cases related to the Ihlen declaration, by

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[107] *I.C.J. Reports 1974*, p. 267, para. 43.

[108] Ibid., p. 268, para. 46.

[109] Kiss, Alexander Charles, *Répertoire de la pratique française en matière de droit international public* (Paris, Editions CNRS, 1962-1972), vol. 111, p. 33. Quoted by María Isabel Torres Cazorla in "Los actos unilaterales de los Estados en el derecho internacional contemporáneo", research paper submitted to the second competitive examination for full professorship, University of Málaga, Spain, 2001 (unpublished), p. 55.

[110] See the arbitral decision of 1 June 1931 in the *Campbell* case (United Kingdom v. Portugal), *Reports of International Arbitral Awards (RIAA)*, vol. II, p. 1156; the *Barcelona Traction* case, *I.C.J. Reports 1964*, p. 22; and the decision of the Permanent Court of International Justice in the "*S.S. Lotus*" case of 7 September 1927 (France v. Turkey), *PCIJ*, series A, No. 10, p. 18.

[111] Jacqué, Jean-Paul, "A propos de la promesse unilatérale", *Mélanges offerts à Paul Reuter. Le droit international: unité et diversité* (Paris, 1981), p. 342.

which Norway promised, recognized and even renounced in favour of Denmark; while this renunciation did involve a transfer rather than an abdication, which to some authors might constitute a treaty relationship, such an affirmation is unacceptable, since it undermines the unilateral character of the act. The Permanent Court of Arbitration considered this question and issued an opinion on it. In its decision of 11 November 1912 in the case between Russia and Turkey involving debt and the payment of interest, the Court attributed a binding character to Russia's renunciation of interest payments on its debt to Turkey.[112]

161. The unilateral assumption of new obligations without the need for the addressee's acceptance is possible under international law. A State may assume obligations by means of a promise, a recognition or a renunciation independently of their acceptance by the addressee, which distinguishes these, as noted earlier, from other, similar institutions. In the first case, it has been noted that the State making a declaration, and thus a promise in the sense herein understood, assumes the obligation to act in conformity with the terms of that declaration, which could thus be considered to have the same character as a norm incorporated in a treaty.[113] By recognizing, the State that accepts a legal modification assumes obligations that are implied by this act — for example, the concrete obligations that arise from recognition of a State. The recognizing State thereafter considers a specific entity to be an entity having legal capacity and legal personality under international law, even though it may already have this status conferred on it by the reasons that make it a subject of international law.

162. It is important for the draft articles under study that a provision be elaborated that reflects the binding nature of unilateral acts. This provision as it stands in the proposed text speaks of any unilateral act "in force", which refers to the time of its formulation, that is, to the time when the legal effects of the act become operative and the act becomes opposable against the author State or States by the addressee or addressees. While the term "in force" has its origin in treaty language and would appear to be limited to that sphere, it can also be applied to unilateral acts. Entry into force must be understood as the time a particular legal act begins to produce its effects. From here on it will be necessary to distinguish between the binding nature of an act, which in turn implies its enforceability and opposability, and the act's applicability, which may, of course, occur at a different time. In any event, this question will be dealt with in greater detail further on. On the basis of the foregoing, and adhering somewhat closely to the Vienna Conventions of the law of treaties, the following draft article is hereby proposed:

Article 7
Acta sunt servanda

Any unilateral act in force shall obligate the State or States formulating it and must be implemented in good faith.

[112] *RIAA*, vol. XI, p. 446.
[113] Sorensen, M., *Collected Courses* ..., vol. 101 (1960-III), p. 57.

B. Application of a unilateral act in time

163. The question of the application of legal acts, particularly treaties and unilateral acts, in time is not limited to non-retroactivity, which has been dealt with in a clearly formulated principle that will be considered later. Application in time presupposes taking into account both the entry into force or the commencement of the effects of the unilateral act, which is in turn related to opposability and enforceability, and its application, which may take place prior to this time or even after the act has ceased to produce its legal effects, so long as the author State has declared or in some way manifested a distinct intention.

164. In the area of treaty law, the principle that governs the application of a treaty is that of non-retroactivity. Indeed, treaties are not applied to prior situations unless the parties so agree, as clearly stipulated in article 28 of the 1969 Vienna Convention. This principle, which is applicable to all legal acts, is widely referred to in doctrine and in jurisprudence. Thus it has been said by some that "the principle of non-retroactivity is a general principle applicable to all international legal acts".[114] In the *Ambatielos* case, the International Court of Justice pointed out that it was impossible to consider that a treaty had been in force prior to the exchange of ratifications and that, in the absence of a special clause or object necessitating retroactive application, it would be impossible to say that one of its provisions had been in force previously. Specifically, the Court noted that accepting the Greek argument would mean "giving retroactive effect to Article 29 of the Treaty of 1926, whereas Article 32 of this Treaty states that the Treaty ... shall come into force immediately upon ratification. Such a conclusion might have been rebutted if there had been any special clause or any special object necessitating retroactive interpretation. There is no such clause or object in the present case. It is therefore impossible to hold that any of its provisions must be deemed to have been in force earlier".[115]

165. It would seem possible to apply to unilateral acts the principle of the law of treaties that holds that a treaty can be applied only in relation to events or questions that arise or exist while the treaty is in force unless the parties have a different intention, either explicit or implicit. The will of a State, the intention expressed in its declaration or the intention that can be perceived from an interpretation of the declaration is fundamental to the application of the act in time. A unilateral act cannot be applied to prior situations or events occurring prior to its formulation unless the author State had a different intention in mind. The principle of the non-retroactivity of a legal act is not absolute. A State may derogate from it and voluntarily change the scope of temporal application of its act.

166. There is no need to draw a different conclusion in the case of unilateral acts. In principle, a unilateral act begins to produce its effects at the time it is formulated. Recognition, for example, as is well documented in doctrine, begins to have legal effect the moment the act of recognition is formulated, and it does not, in principle, have a retroactive character, a fact that has been emphasized in jurisprudence, which says that "[it] is not a principle accepted by the best recognized opinions of authors

[114] Daillier and Pellet, *Droit international public* (Paris, LGDC, 1999), p. 219, para. 140.
[115] *I.C.J. Reports 1952*, p. 40, subparagraph (i).

on international law, as is alleged, that the recognition of a new State relates back to a period prior to such recognition".[116]

167. As noted above, one must distinguish between the problem of the application of the act in its operative form, which can refer to events or situations occurring prior to its formulation or events and situations occurring after its entry into force, and its entry into force, a term of art in treaty law that may be applied to unilateral acts. The question of entry into force or determination of the moment when an act begins to produce legal effects will be considered in chapter IV of this report.

168. An article on application in time in the strict sense meant here might be worded as follows:

Article 8
Non-retroactivity of unilateral acts

A unilateral act shall be applicable to events or situations occurring after its formulation, unless the State or States authors of the act have manifested in any way a different intention.

C. Territorial application of a unilateral act

169. The question of the territorial application of a unilateral act must also be considered in the light of the solution contemplated in the 1969 Vienna Convention, particularly in article 29 thereof.[117] In the realm of treaties, this question, as the first Special Rapporteur noted in his commentary on draft article 58 (Application of a treaty to the territories of a contracting State), application of a treaty is not limited to a particular territory, but also to

> "territories which the parties have purported to bind by the treaty and which, therefore, are the territories affected by the rights and obligations set up by the treaty. Thus, although the enjoyment of the rights and the performance of the obligations contained in a treaty may be localized in a particular territory or area, as in the case of Antarctica, it is the territories with respect to which each party contracted in entering into the treaty which determine its territorial scope".[118]

170. In codifying the topic in the context of the law of treaties, it is important to note that the Special Rapporteur, in his commentary on the same article, refers to the object of the article and to a rule of general application. With regard to the subject of the article, the Special Rapporteur notes that "the object of [article 58] is to provide a rule to cover cases where the intention of the parties concerning the territorial scope of the treaty is not clear"; a general rule is then proposed: "The rule that a treaty is to be presumed to apply with respect to all territories under the sovereignty

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[116] Quoted by Torres Cazorla, op. cit., note 109, p. 58; cited in *Eugene L. Dider, adm. et al. v. Chile*, between Chile and the United States of America, 9 April 1894, quoted by V. Coussirat-Coustere and P. M. Eisemann in *Répertoire de la jurisprudence arbitrale internationale*, vol. I, 1794-1918 (Dordrecht, Boston and London, 1989), p. 54.

[117] Article 29 reads: "Unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory".

[118] Third report on the law of treaties by Sir Humphrey Waldock, Special Rapporteur, *Yearbook ... 1964*, vol. II, document A/CN.4/167 and Add.1-3, pp. 10-11, para. (l) of the commentary on draft article 58.

of the contracting parties means that each State must make its intention plain, expressly or by implication, in any case where it does not intend to enter into the engagements of the treaty on behalf of and with respect to all its territory".[119]

171. This question has been amply considered in doctrine within the framework of the law of treaties, so that any further commentary here would be excessive. The question that arises is whether the principle established in this context can be transferred to the regime of unilateral acts. A review of some of the declarations containing unilateral acts in the sense that is of interest to the Commission, such as those relating to the recognition of States or the renunciation of certain territories, indicates that in no case does the author State specify the space to which the declaration applies, leading one to conclude that, most often, the general principle cited above is applied.

172. Accordingly, the principle and the exception thereto, although of conventional origin, can be combined in a single provision that reads:

Article 9
Territorial application of unilateral acts

A unilateral act is binding on the State that formulates it in respect of its entire territory, unless a different intention can be inferred or otherwise determined.

IV. Entry into force in the context of the law of treaties and determination of the moment when a unilateral act begins to produce its legal effects

173. A treaty produces its legal effects once the parties have definitively expressed their intent to be bound by it. Here, of course, we are disregarding the effects a treaty may produce in respect of third parties, which are more likely to involve the extension of rights or the imposition of duties on a third State, subject to its consent in both cases.

174. A unilateral act, however, produces its legal effects at the time it is formulated, even though, as noted above, it may be applicable to situations or events occurring prior to its formulation as well as after its entry into force. A unilateral act comes into existence at the time it is formulated if, as noted earlier, it meets the requisite conditions of validity. In the case of the unilateral acts of interest to the Commission, according to the most solid doctrine and international jurisprudence, it is not necessary for the addressee to accept or react in any way for the act to produce its legal effects. The International Court of Justice, in its 1974 decisions, which have been amply reviewed from the standpoint of doctrine (although the Court was referring to a specific unilateral act, such as promises, all these forms characterize a category of acts under which States assume obligations), tended to support the existence in international law of such acts that, while unilateral in form, produce legal effects by themselves: "[no] subsequent acceptance of the declaration, nor even a reply or reaction from other States, is required for the declaration to take

[119] Ibid., paras. (3) and (4) of the commentary.

effect, since such a requirement would be inconsistent with the strictly unilateral nature of the juridical act by which the pronouncement by the State was made."[120]

175. A unilateral act is thus opposable against the State that formulates it from the moment of formulation. The addressee State may demand that the author State implement the act. This enforceability, which is also often mentioned in doctrine, refers to the capacity of the party to whom an obligation has been addressed to request performance by the author. One may well ask whether, under the definition of unilateral acts that the Commission has created which reflects their variety, this assessment can now be considered to be valid for all cases. In the case of promises, for example, as can be inferred from the Court's decision, the declarations by the French authorities produced their legal effects from the moment they were formulated.

176. At the same time, an act by which a State recognizes a de facto or de jure situation originates at the moment it is formulated, even though its application may have a retroactive character if the declaring State expresses or demonstrates that intention. In general, it can be deduced from a review of practice that acts of recognition produce their effects from the time they are formulated unless they reflect a different intention. From the declarations reviewed it can be inferred that the declaring States did not intend for their declarations to be applicable prior to or at a time other than the time of their formulation, which possibility should not, however, be ruled out.

V. Structure of the draft articles and future work of the Special Rapporteur

177. Thus far, as can be seen, a series of draft articles has been presented and revised; some of these will be considered by the Drafting Committee, others have been referred back to the Working Group that is to meet during the current session while still others are being submitted to the Commission for consideration for the first time.

178. The draft articles have been organized to contain a Part One (arts. 1-4), which covers the general rules applicable to all unilateral acts, regardless of their substantive content and category: definition, capacity of the State, persons authorized to formulate unilateral acts and confirmation of a unilateral act formulated by an unauthorized person. These draft articles have been transmitted to the Drafting Committee.

179. In addition, if the Commission should conclude that the conditions of validity and causes of invalidity are generally applicable, Part One will include an article 5, now being submitted in a new form to reflect the observations and comments of members of the Commission and representatives on the Sixth Committee of the General Assembly; this text will be considered by the Working Group of the Commission which is to be re-established to consider the topic again this year.

180. Part One will also include article 6, on determination of the moment at which a unilateral act begins to produce its legal effects; this is to some extent, and bearing in mind the differences between the regime applicable to the law of treaties and the

[120] *I.C.J. Reports 1974*, p. 267, para. 43.

regime applicable to unilateral acts, roughly equivalent to entry into force in the former. No text is being submitted on this point, as the Special Rapporteur thought it might be more useful for the Commission to discuss this aspect of the topic and give him appropriate guidance so that he can present specific wording in his sixth report.

181. Articles 7, 8 and 9 deal with the observance and application of unilateral acts and are to be considered by the Commission at the current session: one draft article concerns observance of unilateral acts (*acta sunt servanda*), one deals with the application of unilateral acts in time (non-retroactivity) and one with the application of unilateral acts in space (territorial application).

182. Part One will conclude with articles 10 and 11, which concern the interpretation of unilateral acts. It will be recalled that the Special Rapporteur submitted draft articles in his fourth report that were given preliminary consideration at the Commission's fifty-third session. The draft articles are now being submitted in a slightly revised form, taking into account the comments and observations made by members of the Commission and the Sixth Committee in 2001.

183. Lastly, Part Two of the draft articles will deal with the elaboration of rules applicable to specific types of acts, as the Commission suggested in 2001. These will be rules applicable to unilateral acts by which States assume unilateral obligations, a concept that to a certain extent describes an international promise, which is understood as having a unilateral character. For the time being, the Special Rapporteur will limit himself to setting out three possible rules applicable to this category of act which might differ from the rules applicable to other unilateral acts. They concern the revocability, modification, and suspension and termination of unilateral acts.

184. It is important to look more closely at these aspects, which will be discussed in the Special Rapporteur's next report to the Commission. Important questions will be raised, such as the possibility of revoking those unilateral acts which, like promises, involve the assumption of unilateral obligations by the formulating State. In principle, and in a very preliminary way, one might perhaps conclude that an act of recognition or a promise were irrevocable. In fact, while the act is elaborated or formulated unilaterally, without the participation of the addressee, once the latter acquires the right, that is, when the act produces its effect, the author State may not revoke or even modify the act, much less suspend it, without cause or justification unless the addressee so agrees. The basis for this would seem to lie in the confidence and the expectations that are necessarily created, as previously noted, which constitute the legal security that must exist in international relations.

185. Also to be discussed is the topic of conditional unilateral acts. In principle, a unilateral act would not appear to be subject to any conditions, since making it so would place the act in the context of a conventional relationship or, more precisely, a relationship of offer and acceptance. In the case of recognition, doctrine unanimously holds this to be impossible. The Special Rapporteur would like to invite comments and guidance from members of the Commission in order to facilitate the preparation of his next report, which will take up this question among others.

186. The Special Rapporteur offers for the Commission's consideration the following structure for the draft articles:

Part One. General rules

A. Elaboration of unilateral acts

Article 1. Definition of unilateral acts

Article 2. Capacity of States

Article 3. Persons authorized to formulate unilateral acts

Article 4. Confirmation of a unilateral act formulated without authorization

Article 5. Conditions of validity and causes of invalidity of unilateral acts

Article 5 (a). Error

Article 5 (b). Fraud

Article 5 (c). Corruption of the representative of the State

Article 5 (d). Coercion of the person formulating the act

Article 5 (e). Coercion by the threat or use of force

Article 5 (f). Unilateral act contrary to a peremptory norm of international law (jus cogens)

Article 5 (g). Unilateral act contrary to a decision of the Security Council

Article 5 (h). Unilateral act contrary to a norm of fundamental importance to the domestic law of the State formulating it

B. Moment at which a unilateral act begins to produce its legal effects

Article 6. Moment at which a unilateral act begins to produce its legal effects

C. Observance and application of unilateral acts

Article 7. *Acta sunt servanda*

Article 8. Non-retroactivity of unilateral acts

Article 9. Territorial application of unilateral acts

D. Interpretation of unilateral acts

Article 10. General rule of interpretation

Article 11. Supplementary means of interpretation

Part Two. Rules applicable to unilateral acts by which States assume obligations

Article 12. Revocation of unilateral acts

Article 13. Modification of unilateral acts

Article 14. Termination and suspension of the application of unilateral acts